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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

14 CR 34

5 DINESH D'SOUZA,

6 Defendant.

7 -----x

8 New York, N.Y.

9 May 20, 2014

9:00 A.M.

10
11 Before:

12 HON. RICHARD M. BERMAN,

13 District Judge

14
15 APPEARANCES

16 PREET BHARARA

United States Attorney for the

17 Southern District of New York

CARRIE COHEN

18 PAUL KRIEGER

Assistant United States Attorneys

19 BENJAMIN BRAFMAN

20 ALEX SPIRO

Attorneys for Defendant

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(In open court; defendant present)

THE COURT: Good morning, everybody, please be seated.
So just a few preliminaries.

For one, Mr. Brafman, I have been handed a document called an Advice Of Rights form which is signed both by yourself and Mr. D'Souza. And it advises a defendant of certain rights that they are giving up by entering a guilty plea agreement. And it states, among other things, that both you and he believe that there are not any meritorious defenses to the count, or counts, to which he intends to plead guilty.

So my question is whether you and he, before signing it, had an adequate opportunity to go through that advice of rights form.

MR. BRAFMAN: Yes. And we have discussed, both his rights and whatever defenses might be available, for several weeks now, extensively.

THE COURT: Mr. D'Souza, you went through that carefully, that Advice Of Rights form with Mr. Brafman before you signed it?

THE DEFENDANT: Yes, I did.

THE COURT: Thank you.

I have also reviewed a copy of the letter agreement which is a plea agreement dated, on the first page, May 19th, 2014, and signed by both Mr. Brafman and Mr. D'Souza, today -- May 19 is correct. And today.

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1 And did you each, Mr. Brafman first, have an
2 opportunity to discuss, in detail, this plea agreement between
3 the government and the defense?

4 MR. BRAFMAN: Yes, your Honor. We received a copy
5 yesterday, and we spent a fair amount of time explaining it and
6 discussing it with Mr. D'Souza, signed a copy last night, and
7 we signed an original copy this morning.

8 You should have a copy dated May 20 or May 19.

9 THE COURT: I have one dated May 19, and I have one
10 also -- I guess the original, then, is the one dated May 20,
11 2014.

12 I do have both copies, thank you.

13 MR. BRAFMAN: Yes, sir.

14 THE COURT: Thank you.

15 And Mr. D'Souza, you went over that agreement, the
16 plea agreement, carefully with Mr. Brafman before you signed it
17 this morning?

18 THE DEFENDANT: Yes, I did.

19 THE COURT: Thank you very much.

20 So, Ms. Cohen, the text of both those plea agreements,
21 are they exactly the same?

22 MS. COHEN: Yes, they are, your Honor.

23 THE COURT: Thank you.

24 So it's clear from these documents that Mr. D'Souza
25 wishes to change his plea to the indictment in this case,

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1 particularly with respect to count one of the indictment, from
2 not guilty to guilty. And is my understanding correct, Mr.
3 Brafman, and is that the purpose of today's proceeding?

4 MR. BRAFMAN: Yes, your Honor.

5 Preliminarily, I wanted to thank you, sir, for all of
6 the time you have spent dealing with the complicated legal
7 issues that had to be resolved. But the defendant, this
8 morning, has authorized me to withdraw his previously entered
9 plea of not guilty and enter a plea of guilty to count one of
10 the indictment in satisfaction of the entire indictment, with
11 the understanding that count one of the indictment would be
12 dismissed and that count two will be dismissed at the time of
13 sentence.

14 THE COURT: Count two. Thank you. I appreciate your
15 remarks.

16 So, let's ask Christine Murray to swear in Mr. D'Souza
17 at this time.

18 THE DEPUTY CLERK: Sir, if you can stand. Thank you.
19 And raise your right hand, please.

20 (Defendant sworn)

21 THE DEPUTY CLERK: Thank you, sir, you may be seated.

22 THE COURT: Mr. D'Souza, you should know that now you
23 are under oath. Your answers to my questions must be truthful
24 and could subject you to the criminal penalties of perjury or
25 making a false statement if you were to not answer truthfully,

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1 you realize that?

2 THE DEFENDANT: I do.

3 THE COURT: So before I accept your guilty plea, as we
4 have been discussing preliminarily, I'm going to ask you a
5 series of questions. And the purpose of these questions is to
6 establish that you, in fact, wish to plead guilty, that you do
7 so voluntarily and knowingly, and because you are guilty, and
8 also to establish just what rights you will be giving up by
9 pleading guilty. So if you don't understand any of my
10 questions, or if at any time you wish to consult with Mr.
11 Brafman for any reason, please say so and I'll give you as much
12 time as you need to consult with your attorney.

13 It's essential to a valid plea that you understand
14 every question before you answer.

15 Can we start by asking you, please, to state your full
16 name.

17 THE DEFENDANT: It's Dinesh D'Souza.

18 THE COURT: And you are, how old?

19 THE DEFENDANT: I'm 53.

20 THE COURT: And you're a U.S. citizen?

21 THE DEFENDANT: Yes.

22 THE COURT: And how far did you go in school?

23 THE DEFENDANT: I have a BA from Dartmouth College.

24 THE COURT: And are you now, or have you recently
25 been, under the care, first of all, of a medical doctor?

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1 THE DEFENDANT: No.

2 THE COURT: And how about a mental health physician?

3 THE DEFENDANT: No.

4 THE COURT: And how is your health today, generally
5 speaking?

6 THE DEFENDANT: Just fine.

7 THE COURT: And your mental health?

8 THE DEFENDANT: No issues.

9 THE COURT: And have you ever been addicted to drugs
10 or to alcohol?

11 THE DEFENDANT: No.

12 THE COURT: Ever been hospitalized or treated for any
13 addictions?

14 THE DEFENDANT: No.

15 THE COURT: And have you taken any drugs or medicine
16 or pills, or drunk any alcoholic beverages in the past 24
17 hours?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Nothing that might impact your answers to
20 my questions here this morning?

21 THE DEFENDANT: Nothing.

22 THE COURT: Again, I'm going to ask how you feel,
23 first of all, physically, today.

24 THE DEFENDANT: I feel fine.

25 THE COURT: And mentally?

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1 THE DEFENDANT: I'm fine, your Honor.

2 THE COURT: And you understand what's happening in
3 this proceeding here in court today?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: So here's a question for the lawyers.

6 Do either of you have any doubts or concerns as to Mr.
7 D'Souza's competence to plead at this time.

8 Ms. Cohen?

9 THE DEFENDANT: No, your Honor.

10 MR. BRAFMAN: None whatsoever, your Honor.

11 THE COURT: Nor do I.

12 Based on the record today, including Mr. D'Souza's
13 testimony, I find that he is competent to plead guilty.

14 Mr. D'Souza, have you had a full opportunity to
15 discuss all aspects of this case with your attorney, Mr.
16 Brafman?

17 THE DEFENDANT: Yes, I have, your Honor.

18 THE COURT: Including any possible defenses that you
19 might have to this case, in particular, count one of the
20 indictment to which you have offered to plead guilty today?

21 THE DEFENDANT: Yes, I have.

22 THE COURT: And are you fully satisfied with Mr.
23 Brafman's legal representation of you?

24 THE DEFENDANT: I am.

25 THE COURT: And are you fully satisfied with the legal

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1 advice that he has given you in this matter?

2 THE DEFENDANT: Yes, I am.

3 THE COURT: So now I'm going to explain certain
4 Constitutional rights that you have, and pose certain questions
5 about those.

6 First question is, in that regard, you understand that
7 you have the absolute right to plead not guilty if you wish?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: And under the Constitution and laws of the
10 United States, you, if you determine to plead not guilty, you
11 would be entitled to a speedy and public trial, as you know,
12 even today, if you wanted to, by a jury on the charges
13 contained in the indictment. You realize that?

14 THE DEFENDANT: I do.

15 THE COURT: And if you decided to go forward with the
16 trial, you would be presumed to be innocent at the trial. The
17 government would have to prove that you were guilty by
18 competent evidence and beyond a reasonable doubt before you
19 could be found guilty. And a jury would have to agree
20 unanimously that you were guilty. And you would not have to
21 prove that you were innocent. Do you understand those trial
22 rights that you will be giving up by pleading guilty today?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: Also, at the trial if you elected to go
25 forward and have one, and at every stage of your case, you

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1 would be entitled to be represented by an attorney, as you are
2 today and have been throughout these proceedings. And if you
3 could not afford an attorney, one would be appointed at public
4 expense to represent you; do you realize that?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: Also during a trial, during the trial, if
7 you elected to have one, the witnesses for the government would
8 have to come to Court and testify in your presence. Your
9 attorney could cross-examine the witnesses for the government,
10 he could object to evidence offered by the government, and he
11 could offer evidence and subpoena witnesses on your behalf; do
12 you realize that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: Also at a trial, if you elected to have
15 one, although you would have the right to testify if you chose
16 to do so, you would also have the right not to testify, and no
17 one, including particularly the jury, could draw any inference
18 or suggestion of guilt from the fact that you did not testify,
19 if that's what you chose to do. Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: And even now, this morning, as you're
22 entering this guilty plea, you still have the right to change
23 your mind and to plead not guilty and to go to trial on the
24 charges set forth in the indictment; is that your
25 understanding?

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1 THE DEFENDANT: Yes, it is.

2 THE COURT: If you do plead guilty this morning and if
3 I accept the guilty plea, then you will be giving up your right
4 to have a trial, and the other rights I have been discussing
5 with you, and there will be no trial, but I will still enter a
6 judgment of guilty against you. Do you realize that?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: And I will, thereafter, not today,
9 sometime -- we'll pick a date at the end of this proceeding --
10 on the basis of your guilty plea after I have considered what's
11 called a presentence investigation report that is prepared in
12 the normal course by the probation department, and any
13 submissions I might get from Mr. Brafman and from Ms. Cohen,
14 prior to sentencing. Do you realize that?

15 THE DEFENDANT: I do.

16 THE COURT: So, Mr. D'Souza, have you received and
17 reviewed a copy of the indictment in this case, which contains
18 the charges against you?

19 THE DEFENDANT: Yes, I have.

20 THE COURT: And have you discussed, fully, with Mr.
21 Brafman, those charges in the indictment, in particular, count
22 one to which you intend to plead guilty this morning?

23 THE DEFENDANT: Yes, your Honor, I have.

24 THE COURT: And, again, I know I have asked this
25 before, but it is important to underscore. Are you fully

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1 satisfied with Mr. Brafman's legal representation of you in
2 this matter?

3 THE DEFENDANT: Yes, I am.

4 THE COURT: And are you fully satisfied with the legal
5 advice that he has given you?

6 THE DEFENDANT: Yes.

7 THE COURT: So I'm just going to briefly summarize
8 count one. Of course the indictment in the case speaks for
9 itself, and it is incorporated by reference. But it says in
10 count one, in sum and substance, that in or about August 2012,
11 in the Southern District of New York, the defendant, Mr.
12 D'Souza willfully and knowingly made, and caused to be made,
13 contributions of money, aggregating more than \$10,000 during
14 the 2012 calendar year, in the names of other people, to the
15 campaign of a candidate for -- a New York candidate for United
16 States Senate, to wit, Mr. D'Souza reimbursed others with whom
17 he was associated, and who he had directed to contribute a
18 total of \$20,000 to the campaign of Ms. Wendy Long.

19 Ms. Cohen, did you want to add anything to that
20 summary of count one?

21 MS. COHEN: No, your Honor.

22 THE COURT: Mr. Brafman?

23 MR. BRAFMAN: No, sir.

24 THE COURT: Okay. So now if we could discuss for a
25 moment, Mr. D'Souza, the maximum possible sentence you could

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1 receive for this crime. This does not mean that you will
2 receive the maximum possible sentence, but it is important that
3 you know what the maximums are before we have a knowing and
4 voluntary plea.

5 So, first of all, do you understand that the maximum
6 term of imprisonment that is possible is two years of
7 incarceration?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: And do you understand that the maximum
10 term of supervised release, which is the period of supervision
11 by the probation department that follows any incarceration, the
12 maximum term of supervised release in this case is three years?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: And do you understand that the maximum
15 fine that could be imposed upon you in this matter is the
16 greatest of \$250,000, or twice the gross pecuniary gain derived
17 from the offense, or twice the gross pecuniary loss to persons
18 other than yourself resulting from the offense.

19 Do you realize that?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: And do you know that, in any event, there
22 is a 100-dollar special assessment that is mandatory and will
23 be imposed upon you?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: And do you understand that a felony

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1 adjudication, which this would be, count one of the indictment
2 is a felony, may result in your being deprived of certain
3 rights that you would otherwise have, including the right to
4 vote, the right to hold public office, the right to serve on a
5 jury, and the right to possess a firearm.

6 Do you understand that?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: Ms. Cohen, I take it this is not a
9 situation where restitution will come into play; is that right?

10 MS. COHEN: That's correct, your Honor.

11 THE COURT: And do you understand, Mr. D'Souza, that
12 we have no parole in the federal system, which is where we are
13 today.

14 THE DEFENDANT: I do.

15 THE COURT: And do you understand that -- I mentioned
16 this very briefly a minute or so ago. But in addition to any
17 incarceration, you could be subject to a period of what we call
18 *supervised release* following any incarceration; do you
19 understand that?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: And do you know that with respect to
22 supervised release, there might very well be terms and -- if it
23 were imposed -- there might very well be terms and conditions
24 attached. And if you fail to comply with those terms and
25 conditions, you could, following a hearing, be imprisoned. Do

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1 you realize that?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: And do you understand that if there were
4 such a hearing, that is to say a hearing as to whether you were
5 in compliance with the terms and conditions of supervised
6 release, that would be a nonjury proceeding simply before me as
7 the sentencing judge?

8 THE DEFENDANT: Yes.

9 THE COURT: Are you serving any other sentences, State
10 or federal, or being prosecuted in any other courts for any
11 other crimes at this time?

12 THE DEFENDANT: No.

13 THE COURT: And I'm sure that Mr. Brafman has, and
14 will going forward, discuss sentencing with you. I just want
15 to make a point about sentencing, which is that the United
16 States Sentencing Guidelines -- I'm sure -- well, I'm not sure
17 everybody is aware of it. But it is common knowledge that they
18 are no longer mandatory and, instead, the sentencing courts in
19 trying to come up with a reasonable sentence, review the
20 factors of a statute called 18 United States Code
21 Section 3553(a). And I just want to touch upon those factors
22 here this morning.

23 They include, and I will consider, the nature and the
24 circumstances of the offense or crime, as well as the history
25 and characteristics of the defendant. Usually, as I said

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1 before as set forth in the presentence investigation report,
2 that's done, and any submissions I may get from Mr. Brafman and
3 from Ms. Cohen. And we try to accomplish certain objectives in
4 sentencing, which include these: One, is to reflect the
5 seriousness of the offense; another is to promote respect for
6 the law; another is to provide a just punishment; another is to
7 afford adequate deterrence to criminal conduct; another is to
8 protect the public from further crimes; and another is, where
9 needed, to provide the defendant with educational or vocational
10 training or medical care or other correctional treatment in the
11 most effective manner.

12 And in doing all of that, that is to say in reviewing
13 all of those criteria and factors, the sentencing courts look
14 at the kinds of sentences that are available, the kind of
15 sentence and the sentencing range established in the United
16 States Sentencing Guidelines, even though, as I say, those are
17 no longer mandatory. We look at any policy statements issued
18 by the United States Sentencing Commission that may apply to
19 your case. We seek to avoid unwarranted sentencing, sentence
20 disparities among similarly-situated defendants. And in
21 appropriate cases, of which I don't believe this is one, as Ms.
22 Cohen has said, to provide for restitution.

23 Mr. Brafman, have you had a chance to discuss, even
24 preliminarily, sentencing with Mr. D'Souza?

25 MR. BRAFMAN: Yes, sir.

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1 THE COURT: And do you realize, Mr. D'Souza, that even
2 if you don't like the sentence that I impose, you would not,
3 for that reason alone, be able to withdraw today's guilty plea.
4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor, I do.

6 THE COURT: So if I could turn for just a moment to
7 the plea agreement in this case.

8 Now, this is a document between the government and the
9 defense. It speaks for itself, in its entirety. There are
10 just one, or two, or three provisions that I want to highlight
11 for the purposes of today's sentencing proceedings.

12 So, first of all -- and I'll ask these questions both
13 of counsel and of Mr. D'Souza.

14 There is a provision in the plea agreement that says
15 the sentence to be imposed upon Mr. D'Souza is determined
16 solely by the Court.

17 Now, Ms. Cohen, do you agree with that principle?

18 MS. COHEN: Yes, your Honor.

19 THE COURT: And Mr. Brafman?

20 MR. BRAFMAN: Yes, sir.

21 THE COURT: Mr. D'Souza, do you understand that?

22 THE DEFENDANT: I do.

23 THE COURT: Then do you think, Mr. D'Souza, that you
24 fully understand the consequences of pleading guilty today?

25 THE DEFENDANT: Yes, I do.

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1 THE COURT: Has anybody threatened you, or in any way
2 forced you, to plead guilty?

3 THE DEFENDANT: No.

4 THE COURT: Including any attorneys.

5 THE DEFENDANT: No.

6 THE COURT: So let's go back for a moment to the plea
7 agreement. It's dated on the first page May 19, and on the
8 last page -- and the document that I am relying on is the one
9 that was signed this morning, and signed on May 20, 2014. We
10 can find, among others, the following provisions. And again,
11 I'm going to pose these questions of counsel and of Mr.
12 D'Souza.

13 So there is a provision here, Ms. Cohen, that says
14 that the parties agree that the so-called offense level is 12,
15 the criminal, what we call the criminal history category is 1,
16 and the guideline range in this matter is 10 to 16 months of
17 incarceration. Is that your understanding?

18 MS. COHEN: Yes, your Honor.

19 THE COURT: And Mr. Brafman, is that yours?

20 MR. BRAFMAN: Yes, sir.

21 THE COURT: Mr. D'Souza, you are aware of that?

22 THE DEFENDANT: Yes, I am.

23 THE COURT: There is also a provision that says Mr.
24 D'Souza agrees that he will not seek a two-level reduction in
25 the, what we call the stipulated offense level, for reasons of

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1 acceptance of responsibility. So he will not be seeking such a
2 reduction.

3 Ms. Cohen, do you understand that to be the case?

4 MS. COHEN: Yes, your Honor.

5 THE COURT: And Mr. Brafman, do you?

6 MR. BRAFMAN: Yes, your Honor.

7 I just wanted the record the reflect that we have
8 agreed that the defendant will not seek a two-level adjustment
9 of the guideline level for acceptance of responsibility, not
10 seek it from the government or from the Court or probation. It
11 is understood that the fact that the defendant has agreed to
12 plead guilty will be an issue that we are able to brief for the
13 Court, to the extent that your Honor wants to consider the fact
14 that he did plead guilty, in determining what the appropriate
15 sentence should be.

16 THE COURT: I understand that.

17 And Mr. D'Souza, is that your understanding as well?

18 THE DEFENDANT: Yes, it is.

19 THE COURT: There is also a provision in the plea
20 agreement that says -- first it says, or one part of it says
21 that the parties agree that neither an upward -- what we call
22 an upward -- nor downward departure is warranted. And neither
23 party would seek such a departure. But it goes to say that the
24 parties agree -- and this may be what you are referring to, Mr.
25 Brafman, that either party may seek a sentence outside of the

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1 stipulated guideline range, based on the factors that I
2 enumerated a minute or so ago before, under 18 United States
3 Code Section 3553(a).

4 Ms. Cohen, is it your understanding that that is -- is
5 that a correct summary of those provisions of the plea
6 agreement?

7 MS. COHEN: Correct. And I believe those were the
8 sections of the guidelines that the defense counsel is
9 referring to regarding arguing his plea should count towards
10 those factors.

11 THE COURT: Mr. Brafman, did I get that right?

12 MR. BRAFMAN: Yes, sir. We have the ability to bring
13 factors to the Court under 3553, and request an outside
14 guideline range, but we don't have the right to challenge the
15 computation of the guidelines.

16 THE COURT: Is that your understanding, as well, Mr.
17 D'Souza?

18 THE DEFENDANT: Yes, your Honor, it is.

19 THE COURT: Okay. And then finally from my
20 perspective in terms of the plea agreement, I do want to talk
21 about a waiver of appeal rights.

22 There is a provision in this plea agreement which says
23 that there is a waiver of appeal rights. And, in fact, the
24 defendant agrees not to file a direct appeal. It also says
25 that he waives any rights to bring what's called a collateral

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1 challenge, so called habeas challenges, including but not
2 limited to an application under 28 United States Code Sections
3 2255 and/or 2241. And it also says that Mr. D'Souza waives the
4 right to seek a sentence modification under a section of the
5 Code, 18 United States Code Section 3582(c). And that these
6 waivers apply if the sentence is either within or below the
7 stipulated guideline range, which we identified before as 10 to
8 16 months of incarceration.

9 Ms. Cohen, is that a correct summary of the waiver of
10 appeal rights in this case?

11 MS. COHEN: Yes, your Honor.

12 THE COURT: And Mr. Brafman, do you think that, too?

13 MR. BRAFMAN: Yes, sir.

14 THE COURT: Mr. D'Souza, are you aware of the fact
15 that you are waiving your rights to appeal in the manner I have
16 just described?

17 THE DEFENDANT: Yes, I am.

18 THE COURT: And, Mr. D'Souza, apart from what is
19 contained in the plea agreement, has anybody made any promise
20 or inducement to cause you to plead guilty today?

21 THE DEFENDANT: No.

22 THE COURT: Has anybody made a promise to you as to
23 what sentence you will receive in this case?

24 THE DEFENDANT: No.

25 THE COURT: Including any attorneys?

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1 THE DEFENDANT: No.

2 THE COURT: So I turn to you, Ms. Cohen, and ask you
3 to please summarize for us what you believe the government
4 would be able to prove in terms of evidence if this case were
5 to go to trial, rather than being resolved in this plea
6 allocution here this morning.

7 MS. COHEN: Your Honor, the government would be able
8 to prove at trial beyond a reasonable doubt that the defendant
9 is guilty as charged in count one of the indictment. The proof
10 at trial would consist of testimony by the candidate herself,
11 Wendy Long, regarding the individual donation campaign limit of
12 \$5,000 per individual, or \$10,000 for a married couple, as long
13 as they both agreed to allocate it five thousand and five
14 thousand. She would testify that she informed the defendant of
15 those individual donations.

16 There would be e-mails and other documents showing
17 that the defendant was aware of that limit, that he e-mailed
18 back to Ms. Long acknowledging his understanding of that
19 individual donation limit.

20 There would be testimony by the individuals whom he
21 asked to make the illegal conduit contributions through. That
22 is Tyler Vawser, an individual that worked for the defendant
23 both when he was President of King's College, which is where he
24 worked at the time of the offense, as well as worked for him
25 separately scheduling his engagements.

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1 There would also be testimony by Denise Joseph --

2 THE COURT: Tyler Vawser and his wife, as well? Or
3 no.

4 MS. COHEN: Yes, your Honor.

5 With respect to Tyler Vawser, Tyler Vawser would
6 testify at trial that the defendant asked him to make a
7 donation to the Wendy Long campaign. The amount of that
8 donation was \$10,000. That he made that donation on behalf of
9 himself and his wife. That the defendant reimbursed him,
10 either that day or the next day as he promised he would do when
11 he asked him to make the contribution.

12 The testimony at trial would also show that the time
13 the defendant asked Mr. Vawser to make that donation, that the
14 defendant knew what he was doing was wrong.

15 The defendant, when he asked Tyler Vawser to make that
16 donation, Tyler Vawser immediately asked the defendant if it
17 was okay to make the donation, and the defendant told him to
18 not worry about it. Words to the effect of you support
19 Ms. Long, you know her, that's what you can tell anyone who
20 asks about it.

21 The evidence at trial would also show, through
22 testimony of Denise Joseph, that the defendant, that same day
23 as he asked Tyler Vawser to make the illegal donation, also
24 asked Ms. Joseph to make a 10,000 donation on behalf of herself
25 and her spouse at the time. That she communicated with her

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1 spouse, Dr. Joseph, about the donation. That he wrote a check
2 to the Long campaign either that day or the next day for
3 \$10,000. That the defendant, again as he promised to do when
4 he asked her to make the donation, he paid her back the
5 \$10,000.

6 Both of the reimbursements for donations were made in
7 cash by the defendant, so that he handed \$10,000 in cash both
8 to Tyler Vawser and to Denise Joseph. They would testify about
9 that at trial.

10 In addition, there would be bank records showing the
11 deposit of that money by Tyler Vawser and Denise Joseph on or
12 about the day they also wrote the checks to the Long campaign.

13 In addition, at trial, Ms. Long would testify that she
14 asked the defendant specifically about these two donations, the
15 donations by Tyler Vawser and Denise Joseph and their
16 respective spouses. And that, initially, her concerns were
17 centered around the Josephs' donation. And that the defendant
18 told her, in sum or substance, not to worry about it, that
19 there was nothing wrong with the donations. But that, later
20 after the election, much after the election, that Wendy Long
21 again pressed the defendant. And this time about both
22 donations, the Vawser donation and Josephs' donations. And
23 during that discussion, the defendant admitted that he had
24 reimbursed the both of them for their donations, but told Wendy
25 Long, who expressed her concern, that he had done that, and he

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1 told Wendy Long that she shouldn't worry about it because she
2 had not known a thing about it.

3 Your Honor, we would also show at trial, official
4 documents bank records, the filings in the case, we would also
5 present proof obviously on count two of the indictment, and we
6 are confident that, at a trial, through the trial testimony,
7 and also through all of the documents that we would seek to
8 introduce, that the government would be able to show beyond a
9 reasonable doubt that the defendant here is guilty of
10 count one.

11 THE COURT: And you would show that the -- you may
12 have said this. That these two ten thousand dollar
13 contributions were made in or around August 2012.

14 MS. COHEN: Correct, your Honor. The checks were
15 August 19, 2012 by the Vassars. And by the Josephs, on
16 August 20, 2012. And the deposit slips reflecting the \$10,000
17 cash reimbursement from the defendant to the Vassars and
18 Josephs is, I believe, on August 20 and 21, respectively.

19 THE COURT: And by way of background, also, would you
20 establish that, in February I believe it is, of 2012, Mr.
21 D'Souza and his wife had made a -- maxed out, so to speak, by
22 making their own five and five or 10,000-dollar contribution to
23 the Wendy Long campaign.

24 MS. COHEN: Yes, your Honor.

25 We would present evidence, both through Ms. Long and

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1 through the documents themselves, which would be a check that
2 the defendant wrote to the Long campaign making a donation in
3 March of 2012 to the Long campaign in the amount of \$10,000 on
4 behalf of himself and his wife. And that he then subsequently
5 a form authorizing the campaign to split that donation equally
6 between himself and his wife, \$5,000 each.

7 THE COURT: And lastly, how would you establish venue
8 for purposes of this case?

9 MS. COHEN: Your Honor, the defendant, when he asked
10 Mr. Vawser and Ms. Joseph to make the fraudulent donations,
11 that request was made in the Southern District of New York at
12 the King's College which is located in Manhattan.

13 THE COURT: Thank you.

14 So turning to Mr. D'Souza, in light of the
15 presentation made by the government as to what it believes it
16 would be able to prove if this case were to proceed to trial,
17 and also in light of the questions I have asked you up until
18 now, this morning, and the answers you have given, is it your
19 wish at this time to plead guilty or not guilty to count one of
20 the indictment?

21 THE DEFENDANT: Guilty, your Honor.

22 THE COURT: So would you please tell me then, Mr.
23 D'Souza, in your own words, exactly what it is that you did
24 that makes you believe that you violated -- well, that you are
25 guilty of what is charged in count one of the indictment, which

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1 is the making of contributions in the names of others,
2 aggregating more than \$10,000 during the 2012 calendar year
3 election cycle of the Wendy Long campaign.

4 THE DEFENDANT: In August of 2012, in the Southern
5 District of New York, I caused two close associates to
6 contribute \$10,000, each, to the U.S. Senate campaign of Wendy
7 Long, with the understanding that I would then reimburse them
8 for their contributions. I did reimburse them. I knew that
9 causing the campaign contribution to be made in the name of
10 another was wrong, and something the law forbids. I deeply
11 regret my conduct.

12 THE COURT: And are you pleading guilty to this crime
13 because you are, in fact, guilty of it?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: And, Ms. Cohen, do you believe that there
16 is a sufficient factual predicate for Mr. D'Souza's guilty
17 plea?

18 MS. COHEN: Yes, your Honor. And I believe the
19 defendant's allocution meets all of the elements of the charged
20 crime.

21 THE COURT: And Mr. Brafman, do you, as well?

22 MR. BRAFMAN: Yes, sir.

23 May I just add something? We accept the recitation of
24 evidence that Ms. Cohen put on the record, the substance. And
25 we accept the fact that the government had sufficient proof

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1 beyond a reasonable doubt to convict the defendant of
2 count one, if he had proceeded to trial. Without endorsing
3 every single word that she said. Because I want to, in the
4 sentencing memorandum, place the defendant's conduct in
5 context, so that your Honor understands the full picture. But
6 we don't dispute the fact that the government could prove the
7 case beyond a reasonable doubt. And that the defendant has an
8 adequate basis to allocute. And that he did so effectively.

9 Thank you, sir.

10 THE COURT: Thank you. I agree with both of you, as
11 well, that there is a sufficient factual predicate for this
12 guilty plea. And it is the finding of this Court, in this
13 matter, United States v. Dinesh D'Souza, that the defendant is
14 fully competent and capable of entering an informed plea, that
15 he is aware of the nature of the charges against him and the
16 consequences of pleading guilty, and that the plea is a knowing
17 and voluntary plea supported by an independent basis which, in
18 fact, supports each of the essential elements of the crime
19 charged in count one of the indictment.

20 It is the further finding of the Court that Mr.
21 D'Souza is also fully aware of the potential consequences that
22 result from waiving his appeal rights, and that he has done so
23 both voluntarily and knowingly within the confines of the plea
24 agreement and also, here, during the plea allocution this
25 morning.

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1 Consequently, the plea is therefore accepted. And Mr.
2 D'Souza is now adjudged guilty of the offense charged in count
3 one of the indictment.

4 Mr. Brafman, is there any reason in your opinion why I
5 should not direct that a presentence investigation report be
6 prepared?

7 MR. BRAFMAN: No, sir.

8 THE COURT: And do you wish to be present in
9 connection with any interview of Mr. D'Souza?

10 MR. BRAFMAN: Yes, your Honor.

11 THE COURT: So I hereby order that a presentence
12 investigation report be made, but that there be no interview of
13 Mr. D'Souza unless Mr. Brafman is given the opportunity to be
14 present.

15 And I say this, which we commonly say, Mr. D'Souza, it
16 is in your best interest to cooperate with the probation
17 department who prepares the presentence report, since the
18 report will be important in my decision as to what is an
19 appropriate sentence in this case. So it's my suggestion that
20 you tell them whatever they ask, consulting of course with your
21 attorney, both the good things and not-so-good things. Because
22 if you don't disclose something that they may ask about, and
23 they, being the probation department, find it out themselves,
24 they may say that you were not being truthful with them and
25 that would not be helpful to you.

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1 You, and Mr. Brafman, and the government counsel will
2 have a right and the opportunity to examine the presentence
3 report before the sentencing date, and to file any objections
4 that you may have.

5 And so I urge you, Mr. D'Souza, to review the
6 presentence report carefully with Mr. Brafman and to discuss it
7 with him before sentencing. If there are any mistakes in the
8 report, please point them out to him so that he can point them
9 out to me before the sentencing, and so that I don't proceed on
10 the basis of mistaken information.

11 Counsel, I was intending to set the sentencing down
12 for 11:00 a.m. on September 23, 2014, if that works for all of
13 you.

14 MS. COHEN: Fine with the government, your Honor.

15 MR. BRAFMAN: That's fine, Judge. Thank you.

16 THE COURT: And at that occasion, both Mr. D'Souza and
17 counsel will of course have the opportunity to be heard.

18 I would ask, Mr. Brafman, if you, as I'm certain you
19 will, are intending to make a written submission, if you would
20 be so kind as to file that with the clerk of court and on ECF
21 by September 1, 2014.

22 And then Ms. Cohen, if you are intending to respond to
23 that submission, if you would do so by September 8, 2014.

24 Okay. I don't see any reason to impact the current
25 bail situation.

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1 I do have to say, I have to remind everybody,
2 including Mr. D'Souza, that you need to appear of course in
3 court for sentencing at 11:00 a.m. on September 23, 2014. And
4 that any failure to appear at that time could be a criminal
5 offense, separate crime, and could subject you to a fine and/or
6 a prison term of up to five years in addition to whatever other
7 sentence I might impose for the crime for which you just pled
8 guilty.

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And, Ms. Cohen, you indicated early on --
12 well, I think you did, that you would resolve any outstanding
13 other counts with respect to this indictment. Or did you want
14 to wait to do that at sentencing.

15 MS. COHEN: Yes, your Honor, we would do that after
16 sentencing.

17 THE COURT: Okay.

18 Did you wish to add anything else to this proceeding?

19 MS. COHEN: No, your Honor.

20 THE COURT: Mr. Brafman?

21 MR. BRAFMAN: No, your Honor. Thank you.

22 THE COURT: And this last question is, is the
23 government satisfied with the guilty plea allocution today?

24 MS. COHEN: Yes, your Honor. We believe it meets all
25 of the elements of the charged crime in count one.

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1 THE COURT: And Mr. Brafman, you, as well?

2 MR. BRAFMAN: Yes, sir.

3 THE COURT: Okay. I think that concludes our work for
4 today.

5 Thank you very much, and I'll see you in September.

6 MS. COHEN: Thank you, your Honor.

7 THE COURT: You bet.

8 (Adjourned)

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